

[First Reprint]

SENATE, No. 2659

STATE OF NEW JERSEY

210th LEGISLATURE

INTRODUCED JUNE 12, 2003

Sponsored by:

Senator PAUL SARLO

District 36 (Bergen, Essex and Passaic)

Senator JOHN A. GIRGENTI

District 35 (Bergen and Passaic)

Assemblyman PETER J. BARNES, JR.

District 18 (Middlesex)

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

Assemblyman Holzapfel

SYNOPSIS

Clarifies that lifetime community supervision for sex offenders is parole supervision.

CURRENT VERSION OF TEXT

As reported by the Senate Law and Public Safety and Veterans' Affairs Committee on November 24, 2003, with amendments.

(Sponsorship Updated As Of: 1/13/2004)

1 AN ACT concerning the special sentence of community supervision for
 2 life and amending P.L.1994, c.130, P.L.1997, c.117, P.L.1979,
 3 C.441¹, N.J.S.2C:43-2¹ and N.J.S.2C:43-7.

4
 5 **BE IT ENACTED** by the Senate and General Assembly of the State
 6 of New Jersey:

7
 8 1. Section 2 of P.L.1994, c.130 (C.2C:43-6.4) is amended to read
 9 as follows:

10 2. a. Notwithstanding any provision of law to the contrary, a
 11 [court] judge imposing sentence on a person who has been convicted
 12 of aggravated sexual assault, sexual assault, aggravated criminal sexual
 13 contact, kidnapping pursuant to paragraph (2) of subsection c. of
 14 N.J.S.2C:13-1, endangering the welfare of a child by engaging in
 15 sexual conduct which would impair or debauch the morals of the child
 16 pursuant to subsection a. of N.J.S.2C:24-4, endangering the welfare
 17 of a child pursuant to paragraph (3) of subsection b. of N.J.S.2C:24-4,
 18 luring or an attempt to commit any [such offense] of these offenses
 19 shall include, in addition to any [sentence] ¹[term of imprisonment]
 20 sentence¹ authorized by this Code, a special sentence of [community]
 21 parole supervision for life.

22 b. The special sentence of [community] parole supervision for life
 23 required by this section shall commence immediately upon [completion
 24 of the sentence imposed pursuant to other applicable provisions of the
 25 Code of Criminal Justice] the defendant's release from incarceration.
 26 If the defendant is serving a sentence of incarceration for another
 27 offense at the time he completes the custodial portion of the sentence
 28 imposed on the present offense, the special sentence of parole
 29 supervision for life shall not commence until the defendant is actually
 30 released from incarceration for the other offense. Persons serving a
 31 special sentence of [community] parole supervision for life shall [be
 32 supervised as if on parole and] remain in the legal custody of the
 33 Commissioner of Corrections, shall be supervised by the Division of
 34 Parole of the State Parole Board, shall be subject to the provisions and
 35 conditions set forth in subsection c. of section 3 of P.L.1997, c.117
 36 (C.30:4-123.51b) and sections 15 through 19 and 21 of P.L.1979,
 37 c.441 (C.30:4-123.59 through 30:4-123.63 and 30:4-123.65), and
 38 shall be subject to conditions appropriate to protect the public and
 39 foster rehabilitation. If the defendant violates a condition of a special
 40 sentence of parole supervision for life, the defendant shall be subject
 41 to the provisions of sections 16 through 19 and 21 of P.L.1979, c.441

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLP committee amendments adopted November 24, 2003.

1 (C.30:4-123.60 through 30:4-123.63 and 30:4-123.65), and ¹for the
2 purpose of calculating the limitation on time served pursuant to
3 section 21 of P.L.1979, c.441 (C.30:4-123.65)¹ the custodial term
4 imposed upon the defendant related to the special sentence of parole
5 supervision for life shall be deemed to be a term of life imprisonment.
6 ¹When the court suspends the imposition of sentence on a defendant
7 who has been convicted of any offense enumerated in subsection a. of
8 this section, the court may not suspend imposition of the special
9 sentence of parole supervision for life, which shall commence
10 immediately, with the Division of Parole of the State Parole Board
11 maintaining supervision over that defendant, including the defendant's
12 compliance with any conditions imposed by the court pursuant to
13 N.J.S.2C:45-1, in accordance with the provisions of this subsection.
14 Nothing contained in this subsection shall prevent the court from at
15 any time proceeding under the provisions of N.J.S. 2C:45-1 through
16 2C:45-4 against any such defendant for a violation of any conditions
17 imposed by the court when it suspended imposition of sentence, or
18 prevent the Division of Parole from proceeding under the provisions
19 of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60
20 through 30:4-123.63 and C. 30:4-123.65) against any such defendant
21 for a violation of any conditions of the special sentence of parole
22 supervision for life, including the conditions imposed by the court
23 pursuant to N.J.S.2C:45-1. In any such proceeding by the Division of
24 Parole, the provisions of subsection c. of section 3 of P.L.1997 c.117
25 (C.30:4-123.51b) authorizing revocation and return to prison shall be
26 applicable to such a defendant, notwithstanding that the defendant may
27 not have been sentenced to or served any portion of a custodial term
28 for conviction of an offense enumerated in subsection a. of this
29 section.¹
30 c. A person sentenced to a term of [community] parole
31 supervision for life may petition the Superior Court for release from
32 [community] that parole supervision. The [court shall] judge may
33 grant a petition for release from a special sentence of [community]
34 parole supervision for life only upon proof by clear and convincing
35 evidence that the person has not committed a crime for 15 years since
36 the last conviction or release from incarceration, whichever is later,
37 and that the person is not likely to pose a threat to the safety of others
38 if released from parole supervision. Notwithstanding the provisions
39 of section 22 of P.L.1979, c.441 (C.30:4-123.66), ¹[the appropriate
40 board panel shall not give]¹ a person sentenced to a term of parole
41 supervision for life ¹[a complete discharge] may be released¹ from
42 ¹that¹ parole ¹supervision term only by court order as provided in this
43 subsection¹ .
44 d. A person who violates a condition of a special sentence [of
45 community supervision] imposed pursuant to this section without
46 good cause is guilty of a crime of the fourth degree. Notwithstanding

1 any other law to the contrary, a person sentenced pursuant to this
2 ¹[section] subsection¹ shall be sentenced to a term of imprisonment,
3 unless the court is clearly convinced that the interests of justice so far
4 outweigh the need to deter this conduct and the interest in public
5 safety that a sentence to imprisonment would be a manifest injustice.
6 ¹Nothing in this subsection shall preclude subjecting a person who
7 violates any condition of a special sentence of parole supervision for
8 life to the provisions of sections 16 through 19 and 21 of P.L.1979,
9 c.441 (C.30:4-123.60 through 30:4-123.63 and C.30:4-123.65)
10 pursuant to the provisions of subsection c. of section 3 of P.L.1997,
11 c.117 (C.30:4-123.51b).¹

12 e. ¹[(1)]¹ A person who, while serving a special sentence of
13 [community] parole supervision for life imposed pursuant to this
14 section [who], commits a violation of N.J.S.2C:11-3, N.J.S.2C:11-4,
15 [section] N.J.S.2C:11-5, subsection b. of N.J.S.2C:12-1,
16 N.J.S.2C:13-1, N.J.S.2C:13-6, N.J.S.2C:14-2, N.J.S.2C:14-3,
17 N.J.S.2C:24-4, [a crime of the second degree under] N.J.S.2C:18-2
18 when the offense is a crime of the second degree, or subsection a. of
19 N.J.S.2C:39-4[,] shall be sentenced to an extended term of
20 imprisonment as set forth in N.J.S.2C:43-7, which term shall,
21 notwithstanding the provisions of N.J.S.2C:43-7 or any other law, be
22 served in its entirety prior to the person's resumption of the term of
23 parole supervision for life.

24 ¹[(2)] The [court] judge shall [not] impose a sentence [of
25 imprisonment] pursuant to this subsection [unless] if the judge finds
26 that the ground therefor has been established by a preponderance of
27 the evidence at a hearing [after the conviction of the defendant and on
28 written notice to the defendant of the ground proposed. The
29 defendant shall have the right to hear and controvert the evidence
30 against him and to offer evidence upon the issue], which may occur at
31 the time of sentencing. In making the required finding, the judge shall
32 take judicial notice of any evidence, testimony or information adduced
33 at the trial, plea hearing, or other court proceedings and also shall
34 consider the presentence report and any other relevant information.
35 The finding of the judge shall be incorporated in the record.]¹

36 (cf: P.L.1994, c.130, s.2)

37

38 2. Section 3 of P.L.1997, c.117 (C.30:4-123.51b) is amended to
39 read as follows:

40 3. a. A person who has been sentenced to a term of parole
41 supervision and is on release status in the community pursuant to
42 section 2 of P.L.1997, c.117 (C.2C:43-7.2) shall, during the term of
43 parole supervision, remain on release status in the community, in the
44 legal custody of the Commissioner of the Department of Corrections,
45 and shall be supervised by the [parole officers in] Division of Parole

1 of the State Parole Board as if on parole, and shall be subject to the
2 provisions and conditions set by the appropriate board panel. The
3 appropriate board panel shall have the authority, in accordance with
4 the procedures and standards set forth in sections 15 through 21 of
5 P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.65), to revoke the
6 person's release status and return the person to custody for the
7 remainder of the term or until it is determined, in accordance with
8 regulations adopted by the board, that the person is again eligible for
9 release consideration pursuant to section 9 of P.L.1979, c.441
10 (C.30:4-123.53).

11 b. The Parole Board shall promulgate rules and regulations
12 necessary to carry out the purposes of this act pursuant to the
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
14 seq.).

15 c. A person who has been sentenced to a term of parole
16 supervision for life pursuant to section 2 of P.L.1994, c.130 (C.2C:43-
17 6.4) shall, during the term of parole supervision, remain in the legal
18 custody of the Commissioner of Corrections, be supervised by the
19 Division of Parole of the State Parole Board, and be subject to the
20 provisions and conditions set by the appropriate board panel in
21 accordance with the procedures and standards set forth in sections 15
22 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-
23 123.63 and 30:4-123.65). If the parolee violates a condition of a
24 special sentence of parole supervision for life, the parolee shall be
25 subject to the provisions of sections 16 through 19 and 21 of
26 P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and 30:4-
27 123.65), and may be returned to prison. If revocation and return to
28 custody are desirable pursuant to the provisions of section 19 of
29 P.L.1979, c.441 (C.30:4-123.63), the appropriate board panel shall
30 revoke parole and return the parolee to prison for a specified length of
31 time between 12 and 18 months, which shall not be reduced by
32 commutation time for good behavior pursuant to R.S.30:4-140 or
33 credits for diligent application of work and other institutional
34 assignments pursuant to R.S.30:4-92; provided, however, that nothing
35 contained in this subsection shall be construed or applied to reduce the
36 time that must be served after revocation of parole by a parolee
37 returned to prison for a violation of a condition of any other term of
38 parole supervision. Upon the parolee's release from prison, the
39 parolee shall continue to serve the special sentence of parole
40 supervision for life until released by the Superior Court pursuant to
41 subsection c. of section 2 of P.L.1994, c.130 (C.2C:43-6.4). For the
42 purpose of calculating the limitation on time served pursuant to
43 section 21 of P.L.1979, c.441 (C.30:4-123.65), the custodial term
44 imposed upon the parolee related to the special sentence of parole
45 supervision for life shall be deemed to be a term of life imprisonment.
46 For the purpose of establishing a primary parole eligibility date

1 pursuant to subsection h. of section 7 of P.L.1979, c. 441 (C.30:4-
2 123.51), the specific period of incarceration required to be served
3 pursuant to this subsection shall not be aggregated with a term of
4 imprisonment imposed on the parolee for ¹ [an] the commission of any
5 other¹ offense¹ [committed while serving parole supervision for life] .
6 Nothing in this section shall be construed to preclude or limit the
7 prosecution or conviction for any crime defined in any law of this
8 State, or to limit in any manner the State's ability to pursue both a
9 criminal action and a parole violation pursuant to the provisions of this
10 section or any other law.

11 (cf: P.L.2001, c.79, s.6)

12

13 3. Section 22 of P.L.1979, c.441 (C.30:4-123.66) is amended to
14 read as follows:

15 22. **[The]** Except as otherwise provided in subsection c. of section
16 2 of P.L.1994, c.130 (C.2C:43-6.4), the appropriate board panel may
17 give any parolee a complete discharge from parole prior to the
18 expiration of the full maximum term for which he was sentenced or as
19 authorized by the disposition, provided that such parolee has made a
20 satisfactory adjustment while on parole, provided that continued
21 supervision is not required, and provided the parolee has made full
22 payment of any fine or restitution.

23 (cf: P.L.1995, c.280, s.45)

24

25 4. N.J.S.2C:43-7 is amended to read as follows:

26 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

27 a. In the cases designated in section 2C:44-3, a person who has
28 been convicted of a crime may be sentenced, and in the cases
29 designated in subsection e. of section 2 of P.L.1994, c.130
30 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126
31 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997,
32 c.410 (C.2C:44-5.1), a person who has been convicted of a crime shall
33 be sentenced, to an extended term of imprisonment, as follows:

34 (1) In case of aggravated manslaughter sentenced under subsection
35 c. of N.J.S.2C:11-4; or kidnapping when sentenced as a crime of the
36 first degree under paragraph (1) of subsection c. of 2C:13-1; or
37 aggravated sexual assault if the person is eligible for an extended term
38 pursuant to the provisions of subsection g. of N.J.S.2C:44-3 for a
39 specific term of years which shall be between 30 years and life
40 imprisonment;

41 (2) Except for the crime of murder and except as provided in
42 paragraph (1) of this subsection, in the case of a crime of the first
43 degree, for a specific term of years which shall be fixed by the court
44 and shall be between 20 years and life imprisonment;

45 (3) In the case of a crime of the second degree, for a term which
46 shall be fixed by the court between 10 and 20 years;

1 (4) In the case of a crime of the third degree, for a term which shall
2 be fixed by the court between five and 10 years;

3 (5) In the case of a crime of the fourth degree pursuant to
4 2C:43-6c., 2C:43-6g and 2C:44-3d. for a term of five years, and in
5 the case of a crime of the fourth degree pursuant to [2C:43-6f. and
6 2C:43-6g.] any other provision of law for a term which shall be fixed
7 by the court between three and five years;

8 (6) In the case of the crime of murder, for a specific term of years
9 which shall be fixed by the court between 35 years and life
10 imprisonment, of which the defendant shall serve 35 years before being
11 eligible for parole;

12 (7) In the case of kidnapping under paragraph (2) of subsection c.
13 of 2C:13-1, for a specific term of years which shall be fixed by the
14 court between 30 years and life imprisonment, of which the defendant
15 shall serve 30 years before being eligible for parole.

16 b. As part of a sentence for an extended term and notwithstanding
17 the provisions of 2C:43-9, the court may fix a minimum term not to
18 exceed one-half of the term set pursuant to subsection a. during which
19 the defendant shall not be eligible for parole or a term of 25 years
20 during which time the defendant shall not be eligible for parole where
21 the sentence imposed was life imprisonment; provided that no
22 defendant shall be eligible for parole at a date earlier than otherwise
23 provided by the law governing parole.

24 c. In the case of a person sentenced to an extended term pursuant
25 to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall impose a
26 sentence within the ranges permitted by 2C:43-7a.(2), (3), (4) or (5)
27 according to the degree or nature of the crime for which the defendant
28 is being sentenced, which sentence shall include a minimum term which
29 shall, except as may be specifically provided by N.J.S.2C:43-6f., be
30 fixed at or between one-third and one-half of the sentence imposed by
31 the court or five years, whichever is greater, during which the
32 defendant shall not be eligible for parole. Where the sentence imposed
33 is life imprisonment, the court shall impose a minimum term of 25
34 years during which the defendant shall not be eligible for parole,
35 except that where the term of life imprisonment is imposed on a person
36 convicted for a violation of N.J.S.2C:35-3, the term of parole
37 ineligibility shall be 30 years.

38 d. In the case of a person sentenced to an extended term pursuant
39 to N.J.S.2C:43-6g., the court shall impose a sentence within the ranges
40 permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according to the
41 degree or nature of the crime for which the defendant is being
42 sentenced, which sentence shall include a minimum term which shall
43 be fixed at 15 years for a crime of the first or second degree, eight
44 years for a crime of the third degree, or five years for a crime of the
45 fourth degree during which the defendant shall not be eligible for
46 parole. Where the sentence imposed is life imprisonment, the court

1 shall impose a minimum term of 25 years during which the defendant
2 shall not be eligible for parole, except that where the term of life
3 imprisonment is imposed on a person convicted of a violation of
4 N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.

5 (cf: P.L.2001, c.443, s.6)

6
7 ¹⁵ N.J.S. 2C:43-2 is amended to read as follows:

8 Sentence in accordance with code; authorized dispositions. a.
9 Except as otherwise provided by this code, all persons convicted of an
10 offense or offenses shall be sentenced in accordance with this chapter.

11 b. Except as provided in subsection a. of this section and subject
12 to the applicable provisions of the code, the court may suspend the
13 imposition of sentence on a person who has been convicted of an
14 offense, or may sentence him as follows:

15 (1) To pay a fine or make restitution authorized by N.J.S.2C:43-3
16 or P.L.1997, c.253 (C.2C:43-3.4 et al.); or

17 (2) ~~【To】 Except as provided in subsection g. of this section, to be~~
18 placed on probation and, in the case of a person convicted of a crime,
19 to imprisonment for a term fixed by the court not exceeding 364 days
20 to be served as a condition of probation, or in the case of a person
21 convicted of a disorderly persons offense, to imprisonment for a term
22 fixed by the court not exceeding 90 days to be served as a condition
23 of probation; or

24 (3) To imprisonment for a term authorized by sections 2C:11-3,
25 2C:43-5, 2C:43-6, 2C:43-7, and 2C:43-8 or 2C:44-5; or

26 (4) To pay a fine, make restitution and probation, or fine,
27 restitution and imprisonment; or

28 (5) To release under supervision in the community or to require the
29 performance of community-related service; or

30 (6) To a halfway house or other residential facility in the
31 community, including agencies which are not operated by the
32 Department of Human Services; or

33 (7) To imprisonment at night or on weekends with liberty to work
34 or to participate in training or educational programs.

35 c. Instead of or in addition to any disposition made according to
36 this section, the court may postpone, suspend, or revoke for a period
37 not to exceed two years the driver's license, registration certificate, or
38 both of any person convicted of a crime, disorderly persons offense,
39 or petty disorderly persons offense in the course of which a motor
40 vehicle was used. In imposing this disposition and in deciding the
41 duration of the postponement, suspension, or revocation, the court
42 shall consider the severity of the crime or offense and the potential
43 effect of the loss of driving privileges on the person's ability to be
44 rehabilitated. Any postponement, suspension, or revocation shall be
45 imposed consecutively with any custodial sentence.

46 d. This chapter does not deprive the court of any authority

1 conferred by law to decree a forfeiture of property, suspend or cancel
2 a license, remove a person from office, or impose any other civil
3 penalty. Such a judgment or order may be included in the sentence.

4 e. The court shall state on the record the reasons for imposing the
5 sentence, including its findings pursuant to the criteria for withholding
6 or imposing imprisonment or fines under sections 2C:44-1 to 2C:44-3,
7 where imprisonment is imposed, consideration of the defendant's
8 eligibility for release under the law governing parole and the factual
9 basis supporting its findings of particular aggravating or mitigating
10 factors affecting sentence.

11 f. The court shall explain the parole laws as they apply to the
12 sentence and shall state:

13 (1) the approximate period of time in years and months the
14 defendant will serve in custody before parole eligibility;

15 (2) the jail credits or the amount of time the defendant has already
16 served;

17 (3) that the defendant may be entitled to good time and work
18 credits; and

19 (4) that the defendant may be eligible for participation in the
20 Intensive Supervision Program.

21 g. Notwithstanding the provisions of paragraph (2) of subsection
22 b. of this section, a court imposing sentence on a defendant who has
23 been convicted of any offense enumerated in subsection a. of section
24 2 of P.L.1994, c.130 (C.2C:43-6.4) may not sentence the defendant to
25 be placed on probation.¹

26 (cf: P.L.1997, c.253, s.1.)

27
28 ¹[5.] 6.¹ This act shall take effect immediately.